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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/672,414

09/26/2003

Scott Thomas Loughran

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EXAMINER

GHALI, ISIS A D

ART UNIT

PAPER NUMBER

1611

MAIL DATE

DELIVERY MODE

09/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/672,414	Applicant(s) LOUGHRAN ET AL.	
	Examiner Isis A. Ghali	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-9, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-9, 19-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The receipt is acknowledged of applicants' amendment and request for RCE, both filed 06/19/2008.

Claims 4-6, 10-18 and 21-23 have been canceled.

Claims 1-3, 7-9, and 19-20 are pending and included in the prosecution.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/19/2008 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-3, 7-9, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,221,211 ('211) in view of US 4,325,768 ('768), and optionally in view of US 2004/0118530 ('530).

US '211 teaches multi-ply tissue product containing indicia to indicate the presence of some unique ingredients within the tissue product (abstract). The reference disclosed facial and bath tissue and the indicia are coloring or printing on the internal ply surface, i.e. contacting the glue (col.1, lines 20-30). The tissue comprises more than one fibrous plies that are glued together, i.e. adhesive (col.1, lines 39-45; col.2, lines 34-41). The indicia are color other than white or decorative pattern (col.2, lines 13-23). The indicia include ingredients such as emollient, moisturizers, softening agent, menthol (aromatherapy), cleansing agent and fragrance (col.2, lines 42-44, 53-58; col.4, lines 59-64).

US '211 does not teach the as embossment as instantly claimed by claim 1.

US '768 teaches laminated creped fibrous web material with embossed pattern i.e. non-verbal cue (abstract). Embossment provides the desired bulk and aesthetic appearance of the web (col.4, lines 3-4, 14-16).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide multi-ply tissue product having non-verbal cue as disclosed by US '211, and further add embossment to the plies as disclosed by US '768, motivated by the teaching of US '768 that such embossment provides the desired bulk and aesthetic appearance of the product, with reasonable expectation of having multi-ply tissue product having non-verbal cue in form of embossment that provides bulk and aesthetic appearance to the product.

Although US '211 teaches active agents included in the fibrous product such as emollient, moisturizers, cleansing agent and softening agent, however, US '211 does not explicitly teach the specific ingredients as claimed in claims 7-9, or the package of the product as claimed in claim 1.

US '211 teaches emollient, moisturizers, cleansing agent and softening agent that encompass all chamomile, aloe and vitamin E, and one having ordinary skill in the art at the time of the invention would have selected the specific ingredient according to the specific intended use, motivated by personal individual needs and the knowledge of the pharmaceutical art.

Further, one having ordinary skill in the art would have packaged the product disclosed by US '211 motivated by the general knowledge to one skilled in the art that

packaging protects the product during storage and handling, with reasonable expectation of having the product of US '211 in a package.

US '530 teaches facial or bath tissue or wipe product comprising fibrous material and patterned indicia (abstract; paragraphs 0009, 0013, 0014). The products are packaged for eventual sale to the consumer (paragraph 0048).

One having ordinary skill in the art at the time of the invention would have been motivated to provide multi-ply tissue product having non-verbal cue in form of embossment as disclosed by the combined teaching of US '211 and US '768, and package the product as disclosed by US '530, motivated by the teaching of US '530 that packaging make the product ready for eventual sale, with reasonable expectation of having a packaged product having long shelf life and storage stability.

5. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of US '211 and US '768, and optionally in view of US '530, and further in view of US 6,905,697 ('697).

The combined teachings of US '211, US '768 and optionally US '530 are discussed in section 4 as set forth in this office action.

Although US '211 teaches active agents included in the fibrous product such as emollient, moisturizers, cleansing agent and softening agent, however, US '211 does not explicitly teach chamomile as claimed by claim 7, aloe lotion as claimed by claim 8 or vitamin E as claimed by claim 9.

US '697 teaches fibrous web, in particular tissue web comprising lotion comprising cosmetic agent (abstract). Preferred cosmetic agent included aloe vera, chamomile, and vitamin E (col.12, lines 59-64; col.13, line 7). The web feels pleasant to the skin and if necessary capable of transferring active agents to the skin of the user (col.3, lines 55-57).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide packaged multi-ply tissue product comprising active agent and having non-verbal cue in form of embossment as disclosed by the combination of US '211 and US '768 and optionally US 530, and further select the active agent from chamomile, aloe vera lotion or vitamin E as disclosed by US '697 because US '697 teaches that fibrous web comprising such agents will deliver such preferred cosmetic to the skin if necessary, with reasonable expectation of having multi-ply tissue product having non-verbal cue in form of embossment and comprising chamomile, aloe lotion or vitamin E wherein the product provides pleasant feel and simultaneously deliver necessary cosmetic to the skin of the user.

6. Claims 1-3, 7-9, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,221,211 ('211) in view of US 6,905, 697 ('697).

US '211 teaches multi-ply tissue product containing indicia to indicate the presence of some unique ingredients within the tissue product (abstract). The reference disclosed facial and bath tissue and the indicia are coloring or printing on the internal ply surface, i.e. contacting the glue (col.1, lines 20-30). The tissue comprises more than

one fibrous plies that are glued together, i.e. adhesive (col.1, lines 39-45; col.2, lines 34-41). The indicia are color other than white or decorative pattern (col.2, lines 13-23). The indicia include ingredients such as emollient, moisturizers, softening agent, menthol (aromatherapy), cleansing agent and fragrance (col.2, lines 42-44, 53-58; col.4, lines 59-64).

US '211 does not teach the as embossment and packaging as instantly claimed by claim 1. Although US '211 teaches active agents included in the fibrous product such as emollient, moisturizers, cleansing agent and softening agent, however, US '211 does not explicitly teach chamomile as claimed by claim 7, aloe lotion as claimed by claim 8 or vitamin E as claimed by claim 9.

US '697 teaches fibrous web, in particular tissue web comprising lotion comprising cosmetic agent (abstract). Preferred cosmetic agent included aloe vera, chamomile, and vitamin E (col.12, lines 59-64; col.13, line 7). The web feels pleasant to the skin and if necessary capable of transferring active agents to the skin of the user (col.3, lines 55-57). The reference teaches multiply tissue web and embossing can be used for generating ply adhesion in the multiply tissue, and further teaches that the tissues are packaged (col.14, lines 56-65; col.17, lines 5-15).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide multi-ply tissue product having non-verbal cue and comprising active agent as disclosed by US '211, and further add embossment to the plies as disclosed by US '697 because US '697 teaches that embossment is used to generate ply adhesion, which is desired by applicants, with reasonable expectation of

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having multi-ply tissue product having non-verbal cue in form of embossment that meanwhile generates adhesion of the ply. Further one having ordinary skill in the art would have packaged the tissues as disclosed by US '697 and as required by the logic of cosmetic art to preserve the product during handling, transportation and storage. Additionally, one having ordinary skill in the art at the time of the invention would have replaced the active agent included in the tissue product disclosed by US 211 by any of chamomile, aloe vera lotion or vitamin E as disclosed by US '697 because US '697 teaches that fibrous web comprising such agents will deliver such preferred cosmetics to the skin if necessary, with reasonable expectation of having packaged multi-ply tissue product having non-verbal cue in form of embossment and comprising chamomile, aloe lotion or vitamin E wherein the product provides pleasant feel and simultaneously deliver necessary cosmetic to the skin of the user.

Response to Arguments

7. Applicant's arguments filed 06/19/2008 have been fully considered but they are not persuasive. Applicants traverse obviousness rejection over the combination of US '211 and US '768 by arguing that the combination does not teach package of the product as claimed by claim 1.

The argument is moot in view of the new ground of rejection. However, it is argued that the package does not impart patentable weight absent functional relationship between the package and the product, and because the product still function equally effectively with or without the package.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis A. Ghali whose telephone number is (571) 272-0595. The examiner can normally be reached on Monday-Thursday, 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571) 272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Isis A Ghali/
Primary Examiner, Art Unit 1611

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